



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 11, 2005

Ms. Theresa Lamensky  
Records Division  
Rosenberg Police Department  
2120 Fourth Street  
Rosenberg, Texas 77471

OR2005-02097

Dear Ms. Lamensky:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 219949.

The Rosenberg Police Department (the "department") received a request for a copy of a specified incident report. You state that some of the requested information has been released to the requestor. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we address the department's obligations under subsections 552.301(a) and (b) of the Government Code, which provide:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.
- (b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

The department received the instant request for information on December 13, 2004. You did not request a decision from this office until December 29, 2004. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code. Because the request for a decision was not timely submitted, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); see Open Records Decision No. 630 (1994). Because section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests, we find the department has waived section 552.108 in this instance. See Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); see also Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). But see Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). We note, however, that some of the submitted information is subject to sections 552.101 and 552.130 of the Government Code. Because sections 552.101 and 552.130 can provide compelling reasons to overcome the presumption of openness, we will consider the applicability of those sections to the submitted information.<sup>1</sup> See Open Records Decision No. 630 (1994) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See *id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. Furthermore, the requestor has a special right of access to her own social security number, and that information may not be withheld from her under section 552.101 in conjunction with the federal law. See Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987). We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions like sections 552.101 and 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.130 of the Government Code excepts from public disclosure information that relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). We have marked Texas driver's license numbers that must be withheld from the public under this exception. We note, however, that section 552.130 protects personal privacy interests. In this instance, the requestor has a special right of access to her own Texas driver's license number and such information may not be withheld from the requestor under section 552.130. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).

In summary, the submitted social security numbers may be excepted under section 552.101 in conjunction with federal law. We have marked the Texas driver's license numbers that must be withheld under section 552.130 of the Government Code. The requestor has a special right of access to her own motor vehicle information and social security number.<sup>2</sup> The department must also release the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

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<sup>2</sup> We note that because the requestor has a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

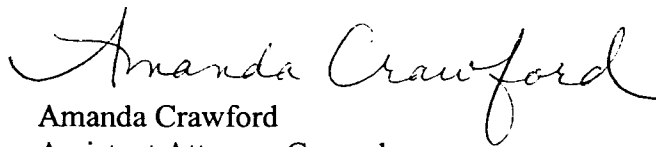
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/sdk

Ref: ID# 219949

Enc. Submitted documents

c: Ms. Latisha Marshall  
11500 Keegans Ridge #1004  
Houston, Texas 77031  
(w/o enclosures)